

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF)
AMERICA,)
)
Plaintiff,)
) Magistrate Case
vs.) No. 08-156M
)
ROGER WESLEY FARRIS,)
II,)
)
Defendant.)

U. S. P. O. and Courthouse
9th Floor
700 Grant Street
Pittsburgh, PA 15219
Friday, March 8, 2008;
3:00 p.m.

Hearing on Detention/Preliminary Exam

Before: Magistrate Judge Amy Reynolds Hay

Reported by:

Karen A. Shiel
Court Reporter

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AGENCY

Counsel Present:

For the Plaintiff: The United States
Government
by Soo Song, AUSA

For the Defendant: Law Office of Paul D. Boas
by Paul D. Boas, Esq.

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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K. Rochford	6	25	38	
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<u>EXHIBITS:</u>	<u>MARKED</u>	<u>RECEIVED</u>
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(NO EXHIBITS WERE MARKED.)

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P R O C E E D I N G S

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JUDGE HAY: Good afternoon everyone. Please be seated. This is the time that was set for the preliminary examination in the matter and detention hearing matter of The United States of America versus Roger Wesley Farris, II, at criminal complaint No. 08-156M. The Government is represented by Assistant United States Attorney Soo Song, and Mr. Paul Boas has entered his appearance on behalf of the Defendant.

Good afternoon, Mr. Boas.

MR. BOAS: Good afternoon, Your Honor.

JUDGE HAY: Ms. Song, you may proceed.

MR. BOAS: Your Honor, could we just have one moment?

JUDGE HAY: Yes.

MR. BOAS: I haven't talked to my client since yesterday.

JUDGE HAY: Okay.

(Discussion was held off the

Magistrate Hearing

record.)

MR. BOAS: Your Honor, I ask for the slight delay because although we would like to seek release and we are imposing the Government's position on detention and we see that Pretrial Services also recommends release, we are willing, to the extent that it can shorten the proceedings, to waive the probable cause hearing. If they're one in the same in the Court's view, you would need to make a determination at the probable cause hearing and then I guess we'll proceed, but I think it can be done shorter.

In terms of the detention matter, we can do without a witness on the stand. And then during the course, if either side feels the need to supplement matters, and that can possibly happen, but we're not necessarily seeking a probable cause hearing today.

JUDGE HAY: All right. If you want to waive that that's fine. I'm the one who certainly reviewed the criminal complaint.

MR. BOAS: We may have very serious defenses at trial and, in fact, we do,

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K. Rochford - Direct

but at this stage we can see that there would
be probable cause.

JUDGE HAY: All right.

MS. SONG: Your Honor, the
Government appreciates that, but I think in
terms of how we're going to present evidence on
detention, there will have to be some
testimony. So I truncated it to the extent
that we are redundant on probable cause, but
it's still going to be witness questions.

MR. BOAS: I guess that's up
to the Government.

JUDGE HAY: That's fine.

MS. SONG: At this time, Your
Honor, the Government calls Kenneth Rochford to
the witness stand.

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KENNETH J. ROCHFORD,

a witness herein, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SONG:

Q. Please state your name for the
record.

1 K. Rochford - Direct

2 A. My name is Kenneth Rochford.

3 Q. You are employed how?

4 A. I'm a senior special agent with the
5 Department of Homeland Security/Immigration
6 Customs Enforcement.

7 Q. How long have you been with
8 Immigration and Customs Enforcement?

9 A. I have been with Immigration and
10 Customs as well as the U.S. Customs Service
11 since November of 2000.

12 Q. Do you have other law enforcement
13 experience?

14 A. Prior to being hired with U.S.
15 Customs, I was a police officer in Greensboro,
16 North Carolina for five years.

17 Q. Do you have a current area of
18 specialty in your investigations?

19 A. Most of our investigations over the
20 past several years have centered around child
21 exploitation and child pornography.

22 Q. You are investigating Roger Wesley
23 Farris, II, for coercion and enticement of a
24 minor?

25 A. That is correct.

1 K. Rochford - Direct

2 Q. Are you the applicant then on the
3 criminal complaint that was submitted on this
4 charge?

5 A. Yes, ma'am.

6 Q. Understanding that we are presenting
7 evidence for purposes of detention and not
8 probable cause, I am going to ask you some
9 questions to the extent that there are answers
10 outside the scope of the complaint. Do you
11 understand, Agent?

12 A. Yes, ma'am.

13 Q. By way of the narrative in the
14 complaint, Mr. Farris placed a telephone call
15 to an undercover agent; is that correct?

16 A. Yes, it is.

17 Q. Approximately what time was this on
18 March 4, according to the criminal complaint?

19 A. The first call was placed
20 approximately 6:55 that was not answered by the
21 UCA. A follow-up phone call was placed by
22 Mr. Farris at approximately 7:20 to 7:30 that
23 evening.

24 Q. As you detail in the criminal
25 complaint, there was a discussion about sex

1 K. Rochford - Direct

2 with a child; is that correct?

3 A. Yes, there was.

4 Q. The age of the child was what?

5 A. Ten years old.

6 Q. She was to be what relation to the
7 adult to whom Mr. Farris was speaking?

8 A. She was stated to be the niece of
9 the adult to whom Mr. Farris was speaking.

10 Q. How specific was Mr. Farris in
11 detailing what specific sexual acts he intended
12 to engage in with this ten-year-old child?

13 A. He was very specific and very
14 graphic in his descriptions.

15 Q. If you would for the Court, what
16 types of things did he detail in specificity?

17 A. He stated that he would want the
18 ten-year-old girl to perform oral sex on him.
19 He actually stated it in the phone call as he
20 wanted the girl to give him a blow job, and
21 after that he would have sex with the young
22 girl without protection.

23 Q. By sex, you mean intercourse?

24 A. Yes, ma'am.

25 Q. In the course of this conversation,

1 K. Rochford - Direct

2 were there any other ground rules, for lack of
3 a better phrase, as to what Mr. Farris would
4 not be entitled to do with this child?

5 A. The only thing that was set up by
6 the UCA was that there would be no anal
7 penetration or anal sex.

8 Q. But any other conduct would be
9 within the scope of this agreement?

10 A. Yes.

11 Q. The sum total for Mr. Farris having
12 access to this child was to be what?

13 A. He stated that he would pay \$700 for
14 the act.

15 Q. In the complaint you state an
16 additional \$50 for gas.

17 A. An arrangement was made later on in
18 the conversation that the UCA "uncle" would
19 bring the girl to Pittsburgh for an additional
20 \$50 in gas money.

21 Q. How much time was Mr. Farris
22 contemplating with this ten-year-old child?

23 A. Several hours.

24 Q. That time was intended to be with
25 him and the child or with him and the child and

1 K. Rochford - Direct

2 the adult?

3 A. Mr. Farris and the child.

4 Q. Alone?

5 A. Yes.

6 Q. Did Mr. Farris and the undercover
7 agent discuss specifically the body type or
8 physical description of the ten-year-old child,
9 the issue in this case?

10 A. Yes. During conversation Mr. Farris
11 asked what the ten-year-old niece looked like,
12 and she was described as a little tall for her
13 age, skinny, long brown hair, small breasted,
14 and no pubic hair.

15 Q. Did Mr. Farris specifically ask
16 about whether she was menstruating?

17 A. Yes, he did.

18 Q. What did the undercover agent
19 respond?

20 A. The undercover agent responded, "No,
21 she wasn't. She was only ten years old."

22 Q. Did Mr. Farris elicit whether this
23 child was experienced sexually?

24 A. Yes, he did.

25 MR. BOAS: Your Honor, I

1 K. Rochford - Direct
2 thought I waived the probable cause hearing.
3 I'm not sure how a lot of this deals with
4 matters relevant to the detention once we get
5 past the initial aspect of the age and so
6 forth.

7 JUDGE HAY: I'm going to
8 overrule the objection.

9 MR. BOAS: Okay.

10 BY MS. SONG:

11 Q. I'm sorry. I had asked you whether
12 he had elicited questions about whether this
13 child was sexually experienced.

14 A. Yes, he did. He asked the UCA had
15 she ever done anything like this before, and
16 the UCA responded that the uncle was the only
17 one who had experience with the ten-year-old.

18 Q. Did Mr. Farris ask any questions or
19 express concern about whether this ten-year-old
20 was discreet and whether she would tell any
21 other adults about what happened?

22 A. Yes. During the initial
23 conversation, and I believe in a subsequent
24 conversation, he asked if she would keep this
25 quiet. "Is she going to tell anybody? Is she

1 K. Rochford - Direct

2 going to tell her mother?" And the UCA agent
3 stated that in his experience she had not told
4 her mother. She had kept it between the two of
5 them in the undercover capacity.

6 Q. Did Mr. Farris express in his
7 conversation whether he would be able to tell
8 if this ten-year-old child was, in fact, older,
9 if an older child were put forth as being a
10 ten-year-old?

11 A. Yes. In his conversation he stated
12 that he would be able to tell if the girl was
13 actually the age he was being told that she
14 was.

15 Q. In the conversation on March 4,
16 Agent Rochford, did Mr. Farris discuss whether
17 this was to be a singular occurrence or a
18 longer-term undertaking?

19 A. He said that he hoped that it would
20 be an ongoing relationship.

21 Q. Do you recall any of the specific
22 verbiage he used with respect to whether this
23 was to happen once or more than once?

24 A. He stated that he hoped that it
25 would be an ongoing thing, an ongoing

1 K. Rochford - Direct
2 relationship. As a matter of fact, he did
3 state to the UCA to the effect that "I can make
4 you rich if she is what you say she is. And if
5 she's good then, you know, we can keep this
6 going for quite a while."

7 Q. What statements, if any, did
8 Mr. Farris make about getting caught by law
9 enforcement or questioning whether the
10 undercover agent was, in fact, a cop or law
11 enforcement?

12 A. He asked the UCA on two separate
13 occasions in two separate phone calls, "Are you
14 a cop? Are you sure? Have you ever had any
15 time with law enforcement?" And he was told
16 no.

17 Q. In the first conversation, what was
18 said about when this sexual encounter would
19 occur?

20 A. Initially, near the end of the first
21 conversation, Mr. Farris asked the UCA, "Do you
22 have the girl tonight? Do you have her
23 tonight?" The UCA responded, "No."

24 Referring back to prior in the
25 conversations, "I only got her three days a

1 K. Rochford - Direct

2 week. I don't have her tonight. I have her
3 Monday, Wednesday, and Friday."

4 Mr. Farris stated, "Okay. Well,
5 I'll call you back in a couple of days."

6 Q. In fact, on March 5 Mr. Farris and
7 the undercover agent had additional
8 conversations; is that correct?

9 A. Yes.

10 Q. And the plan to engage in sex with
11 this child was furthered; is that correct as
12 well?

13 A. Yes, it was.

14 Q. Again, trying to focus on things
15 that are outside the complaint as phrased in
16 terms of what was going on with the child when
17 she was supposedly leaving West Virginia to
18 come to Pittsburgh, what was said in that
19 conversation?

20 A. I don't understand the question.

21 Q. In other words, what was the timing
22 to be? What did Mr. Farris understand was
23 happening at her home in West Virginia before
24 she was coming to Pittsburgh?

25 A. At the time she was to be getting

1 K. Rochford - Direct

2 out of school at approximately 3:00, and she
3 would be transported to Pennsylvania from West
4 Virginia after she got home from school to the
5 uncle's house.

6 Q. And the uncle was going to bring her
7 directly from school or what was the plan?

8 A. The request had been made that the
9 UCA stop at a Wal-Mart or that type of store
10 and purchase a Hannah Montana video, something
11 Hannah Montana, that this ten-year-old would
12 like. The UCA would bring it and give it to
13 Mr. Farris without the girl knowing about it,
14 so when Mr. Farris did meet with the
15 ten-year-old he could present her with a gift.

16 Q. Were there any discussions whether
17 the child needed to be bathed or prepared for
18 the sexual encounter?

19 A. Prior to leaving the house in West
20 Virginia, the UCA stated that "Before I bring
21 her, I'm going to give her a bath." Mr. Farris
22 stated, "No. I can do that when she gets
23 here."

24 Q. "Here" being where?

25 A. To the hotel in Pittsburgh.

1 K. Rochford - Direct

2 Q. Which, according to the complaint,
3 Mr. Farris had already obtained; is that
4 correct?

5 A. Yes.

6 Q. That was around 5:10 at the Quality
7 Inn University Center?

8 A. That's correct.

9 Q. What about planning for when the
10 uncle brought the ten-year-old child to the
11 hotel? What did Mr. Farris and the undercover
12 agent decide would happen once he arrived?

13 A. The plan was that the uncle would
14 pull up in his truck, the two would acknowledge
15 each other without actually speaking, but the
16 whole time they were still on the cell phones,
17 that Mr. Farris would walk up to the truck,
18 would be able to see the girl to make sure it
19 was what he wanted, and the UCA and Mr. Farris
20 would speak one on one away from the girl and
21 then the exchange of money and then the girl
22 would be presented for the act.

23 Q. As you mention in the criminal
24 complaint, Mr. Farris apparently expressed some
25 concern that he could get hung up for this

1 K. Rochford - Direct

2 conduct; is that correct?

3 A. Yes. During one of the phone calls,
4 Mr. Farris stated that he was getting cold feet
5 and that the cold feet was as a result of "If
6 we get caught, we could really get hung up for
7 this."

8 Q. I just want to be clear. The cold
9 feet was not expressed as cold feet about
10 having sex with a child, but concern at getting
11 caught?

12 A. Yes.

13 MR. BOAS: I'm going to object
14 to the leading nature of this question.

15 JUDGE HAY: I'm going to
16 sustain it for a different reason. I don't
17 know that this witness can answer the question.

18 Q. But in terms of the context of the
19 call, which you have reviewed; is that correct,
20 Agent?

21 A. Yes.

22 Q. Can you give the Court a better idea
23 of the context of this cold feet statement that
24 you have referred to?

25 MR. BOAS: I would object for

1 K. Rochford - Direct
2 the reason that the Court sustained the
3 objection. This witness really can't read the
4 declarant's mind.

5 MS. SONG: I'm not asking him
6 to infer any intent of the speaker.

7 JUDGE HAY: Has he seen the
8 transcript of the call?

9 MS. SONG: He has listened to
10 the call.

11 JUDGE HAY: Okay.

12 BY MS. SONG:

13 Q. Agent Rochford, can you give more
14 detail about the nature of the cold feet
15 statement by the Defendant?

16 A. The nature of the cold feet
17 statement was that he was nervous. There was
18 no mention made that he was nervous about
19 having sex with a ten-year-old. It was that he
20 was nervous about getting caught by the police,
21 that himself and the UCA, thinking it was the
22 uncle, could get hung up for this, could get
23 arrested, could get in trouble.

24 Q. On the 5th, did Mr. Farris make
25 additional statements questioning whether the

1 K. Rochford - Direct

2 agent was a cop or otherwise involved in law
3 enforcement?

4 A. He did ask a second time, the first
5 time being on the 4th and the second time being
6 on the 5th if the UCA was a cop. Again, the
7 UCA said no and, in fact, questioned
8 Mr. Farris as to whether he was with law
9 enforcement.

10 Q. Was Mr. Farris using a correct name
11 for himself in these discussions?

12 A. Yes. He was referring to himself by
13 his first name, Roger.

14 Q. Did he describe himself in any other
15 particulars? Did he say what he looked like,
16 what he did, or where he lived?

17 A. He stated that he was a professional
18 in Pittsburgh. I don't recall any height,
19 weight, hair color. Nothing like that was
20 given.

21 Q. Now, once Mr. Farris was at the
22 hotel room, the operation moved to that
23 location; is that correct?

24 A. That is correct.

25 Q. Would you detail for the Court the

1 K. Rochford - Direct

2 circumstances of the arrest of the Defendant.

3 A. There was still an ongoing
4 telephonic conversation between Mr. Farris and
5 the UCA. The UCA had gone into the hotel and
6 as a matter of fact had been told the room was
7 up on the 5th floor. The UCA proceeded to the
8 5th floor, said that he couldn't see
9 Mr. Farris. Mr. Farris stated, "I'm down in
10 the parking lot," and began questioning the UCA
11 about "What color vehicle do you have? I don't
12 see the vehicle out here."

13 He was told it was a Ford F-150
14 pickup truck. Again, several times he said, "I
15 don't see it out here. Are you sure it's out
16 here? I just want to see" -- the name of the
17 girl he had been given was Sarah Jean. "I just
18 want to see Sarah Jean. I just want to see her
19 before we do anything."

20 He was expressly told by the UCA
21 "Don't go near the truck without me there. I
22 don't want you near her without me there."

23 Mr. Farris found the truck, saw a
24 female agent that we had put in the truck,
25 walked over, was still saying on the phone, "I

1 K. Rochford - Direct

2 see her. I see her. I'm just going to waive
3 to her."

4 He was repeatedly told again to stay
5 away from the truck. At the time of his
6 arrest, he was pounding on the passenger's side
7 window of the vehicle and had reached down and
8 was pulling at the door handle of the truck
9 when he was confronted by police.

10 Q. Let me ask you a question then. As
11 you described it then, the original plan was
12 for a transaction to take place in the hotel
13 room between the uncle and the Defendant; is
14 that correct?

15 A. Yes.

16 Q. You just described a series of
17 actions by the Defendant that were inconsistent
18 with that plan; is that correct?

19 A. Correct.

20 Q. So to the extent that the Defendant
21 was approaching the truck where the
22 ten-year-old was, that was not what had been
23 agreed to with the uncle.

24 A. That is correct.

25 Q. That was the point at which he was

1 K. Rochford - Direct

2 arrested; is that correct?

3 A. Yes.

4 Q. What items on his person did the
5 Defendant have?

6 A. On his person, at the time of the
7 arrest, was the hotel key and his cell phone.

8 Q. In the hotel room what items of
9 evidentiary significance did you find?

10 A. In the hotel room in a desk drawer
11 was \$760 in \$20 bills folded up into
12 \$100 increments. They were placed into a cup,
13 which was wrapped in a bag, which was stuck in
14 the desk drawer. Also, in the nightstand
15 drawer next to the bed was Mr. Farris' wallet,
16 several IDs, including his driver's license and
17 some employment IDs, his wedding ring, and his
18 wallet contained additional currency.

19 Q. Did you determine whether the
20 Defendant had gotten the hotel room in his real
21 name?

22 A. Yes, he did. He had registered in
23 his real name with a personal credit card, a
24 Bank of America credit card.

25 Q. Have you had occasion to learn

1 K. Rochford - Direct

2 whether in his professional capacity the
3 Defendant would see patients?

4 A. Yes. We found that Mr. Farris'
5 employment was with UPMC as an assistant
6 professor, but he was employed with the VA
7 Hospital.

8 We had been advised by Veterans
9 Affairs Office of Inspector General that they
10 do believe that he does see patients at the
11 VA Hospital in Pittsburgh.

12 Q. Have you learned wether or not the
13 Defendant, in fact, has young female children
14 in his home?

15 A. Yes, he does. On the night of
16 Mr. Farris' arrest, we had several agents and
17 several officers from Allegheny County go to
18 his primary residence and spoke to his wife and
19 also found that he had two five-year-old
20 daughters and a two and a half or
21 three-year-old daughter as well.

22 MS. SONG: Those are all my
23 questions, Your Honor.

24 JUDGE HAY: Mr. Boas, you may
25 inquire.

1 K. Rochford - Cross

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3 CROSS-EXAMINATION

4 BY MR. BOAS:

5 Q. Officer Rochford, you referred to a
6 number of telephone conversations, one on the
7 4th and several on the 5th; is that correct?

8 A. Yes, sir.

9 Q. How many of these were tape
10 recorded?

11 A. Most of them were tape recorded. I
12 would have to go back and get an exact count
13 for you.

14 Q. I understand that from talking to
15 the Government that, perhaps, the last one you
16 referred to in the parking lot may not have
17 been, if you recall, or wasn't, do you think?

18 A. Through a recording device on the
19 UCA, the agent's side of the conversation was
20 recorded. Mr. Farris' side was not recorded
21 due to the fact that in order to record the
22 conversation, you have to have an ear bud in,
23 and the ear bud would have thrown off the
24 undercover.

25 Q. But you think up until that point

1 K. Rochford - Cross

2 most of the calls were recorded?

3 A. Yes, sir.

4 Q. Have you listened to these calls?

5 A. Yes, I have.

6 Q. Do they appear audible from both
7 speakers' point of view?

8 A. Yes, sir.

9 Q. Now, would it be fair to say that
10 the call on March 4 ended with Mr. Farris?
11 Dr. Farris had indicated to you that, "Okay. I
12 have this information. I'll call you back in a
13 couple of days." Is that what you said?

14 A. Well, he didn't indicate it to me.
15 He indicated that to the undercover agent.

16 Q. The UCA; correct? That is what you
17 said, "I'll call you back in two days" or
18 something like that?

19 A. After he asked if the girl was
20 available that night and he was told no he
21 said, "Okay. I'll call you back in couple
22 days."

23 Q. And of course if he didn't call back
24 and you never heard from him again, that would
25 have been the end of it at least in terms if

1 K. Rochford - Cross

2 this was, in fact, a ten-year-old girl?

3 A. Possibly.

4 Q. But you called -- or when I say
5 "you" I'm speaking generically as the
6 Government.

7 A. Okay.

8 Q. The Government called the next day;
9 correct?

10 A. Yes, sir.

11 Q. And told him before he could call
12 back or decide whether to do this, "I have the
13 girl. She gets out of school at 3:00." And so
14 on and so forth.

15 A. The UCA agent did call him and state
16 that the girl was available.

17 Q. It was at that time the plan began
18 to be formulated for a meeting?

19 A. Yes.

20 Q. You mentioned that there was some
21 discussion about buying a Hanna Montana toy.

22 A. Yes.

23 Q. Would it be fair to say that it was
24 the UCA who brought up the idea of buying
25 something and Mr. Farris said, "Well, then you

1 K. Rochford - Cross

2 pick up something"? It wasn't his idea, was
3 it?

4 A. The UCA agent brought up the fact
5 that the ten-year-old girl likes Hannah
6 Montana, and that was done in the first
7 conversation.

8 Q. So this wasn't Dr. Farris' idea to
9 bring up Hannah Montana or even say anything
10 about a present. In fact, it was the UCA who
11 was to buy the present; is that correct?

12 A. At the direction of Mr. Farris, yes.

13 Q. After the UCA brought up that she
14 liked Hannah Montana.

15 A. Yes.

16 Q. On one of these conversations, the
17 second day, you indicated that Dr. Farris was
18 getting cold feet.

19 A. He stated he was getting cold feet
20 and that if they got caught then they both
21 could get hung up for this.

22 Q. Sure. He said he was getting cold
23 feet. He talked about the risk if he got
24 caught, but he said he was getting cold feet;
25 correct?

1 K. Rochford - Cross

2 A. Again, in his own statement he was
3 getting cold feet at the thought of getting
4 caught, not at the thought of having sex with a
5 ten-year-old.

6 Q. I understand that, but didn't he say
7 on several occasions he's not sure that he
8 wants to do this? "I kind of want to do it. I
9 kind of don't want to do it"?

10 A. No, sir.

11 Q. He never said that?

12 A. Not that I can recall and not that I
13 have heard in any of the recordings.

14 Q. Do you recall him saying at one
15 point when the so-called uncle said, "Well, I'm
16 already here. I'm already close." He kept
17 saying, "Well, even if I don't do it, you can
18 have the money"? Do you remember that?

19 A. Actually, what the statement was,
20 "If we do this or if we don't do this, I'll
21 still give you the money."

22 Q. Okay. So for some reason he was
23 expressing that it may not happen; correct?

24 A. His nervousness, yes.

25 Q. Well, that's your opinion of it.

1 K. Rochford - Cross

2 You were the one who said the statement was "If
3 we do this or if we don't do it, you can still
4 have the money"?

5 A. Correct.

6 Q. So he was saying it may happen or it
7 may not happen.

8 A. Correct.

9 Q. Would it be fair to say as he was
10 saying this the UCA attempted to convince him
11 that he should do it? "We are already close.
12 We are already here. I have already come all
13 the way from West Virginia."

14 Weren't those sort of things said
15 when he started expressing his misgivings about
16 doing this for whatever reason?

17 A. He stated that when the UCA agent
18 was nearby.

19 Q. Right. Right. That's what the UCA
20 said, and that was a response to his saying
21 "Maybe it won't happen."

22 A. The text of the conversation was
23 that maybe this would happen, maybe this
24 wouldn't happen, and I would still give you the
25 money.

1 K. Rochford - Cross

2 Q. Because the UCA was saying --

3 A. But there was a conversation about
4 "We will still get together and talk about
5 this."

6 Q. Okay. I'm not disputing that there
7 was a conversation about getting together. But
8 Dr. Farris is beginning to express -- and it's
9 more than beginning because he said it in an
10 earlier conversation either cold feet or maybe
11 it won't happen or I'll give you the money
12 anyway. And the UCA is saying, "Let's get
13 together and talk about it"; "Okay. We'll talk
14 about it;" correct?

15 A. Yes.

16 Q. Okay. Although not everything
17 that's said by either side is necessarily true,
18 he says at one point, "I have never done this
19 before." Correct?

20 A. Correct.

21 Q. And that's part of his nervousness?

22 A. Correct.

23 Q. Part of his misgivings?

24 A. That I couldn't tell you.

25 Q. Well, that's right. Do you recall,

1 K. Rochford - Cross

2 even though the very last conversation may not
3 have been recorded, the UCA telling you that he
4 said in the parking lot, "I don't want to do
5 this," but, in fact, the reason he was in the
6 parking lot was not so much because he was
7 breaking the rules to get there earlier, but
8 because he was leaving the hotel?

9 A. No. The conversation on the side of
10 the wire that we have is that he wanted to go
11 over, and he wanted to see the girl in the
12 truck to make sure that he was getting what he
13 wanted to get.

14 Q. Do you recall at some point being
15 told what he said was, "I don't want to do
16 this. I just want to see her. I want to go
17 over to the truck and see her"? Not
18 necessarily to see if that's what I want, but
19 "I'm not going to do this. I just want to see
20 her"?

21 A. He stated that post arrest, which is
22 pretty much what I would expect him to say.

23 Q. Well, you don't have a tape
24 recording of what he said, his side of that
25 last call?

1 K. Rochford - Cross

2 A. No, sir, I do not.

3 Q. Was there a surveillance of the
4 hotel at some point earlier?

5 A. Earlier within the day, no, sir.

6 Q. Well, earlier like Within an hour of
7 the incident?

8 A. Within approximately 20 to 25
9 minutes prior to his arrest there were
10 surveillance agents in the parking lot.

11 Q. Did they report that at one point he
12 left the room with all of his things, walked
13 around, left, and then came back?

14 A. No, sir.

15 Q. Do you recall either on a tape or
16 hearing from the UCA that one of the things he
17 said was "I want out," that expression?

18 A. No.

19 Q. Is there a report of this last
20 incident, the one that his side was not taped
21 on? Would the agent have been asked to write
22 up his recollection of what Dr. Farris said?

23 A. The agent has been asked to write up
24 his recollection, and he is doing so.

25 Q. But, of course, the accuracy of it

1 K. Rochford - Cross

2 can't be verified via tape like the other ones
3 because we don't have --

4 A. Not Mr. Farris' side of the
5 conversation.

6 Q. But it would be fair to say that the
7 UCA was trained and instructed to try to
8 convince him that if he has any misgivings he
9 shouldn't worry about it.

10 A. If his only misgivings were about
11 being arrested, then alleviate those fears.

12 Q. Right. Or if that was the
13 perception of his misgivings, because we can't
14 always tell what the misgivings are based on.

15 A. Unless he states them, yes.

16 Q. Right. But saying things like "This
17 may happen or this may not happen. I'll pay
18 anyway," that doesn't necessarily lend itself
19 to an easy interpretation of what's meant.

20 A. That is correct.

21 Q. But the agent is still trying to say
22 "Hey, we are already here. We're in the lot."
23 Describing the truck and so forth.

24 A. He said, "We're already here." The
25 description of the truck came when Mr. Farris

1 K. Rochford - Cross

2 was trying to find the truck with the girl.

3 MR. BOAS: Excuse me for one
4 second.

5 (Discussion was held off the
6 record.)

7 Q. Do you recall that when Dr. Farris
8 said, "I kind of want to do this, I kind of
9 don't. I'm getting cold feet," that the agent
10 said, "When we get there, I'll tell you my
11 feelings about it"? Do you remember that?

12 A. Yes, sir, I do.

13 Q. So really the last understanding was
14 that we don't know what he was going to do, but
15 they would at least talk about it when the
16 agent got there?

17 A. Yes.

18 Q. Now, a search was made of the
19 vehicle that Dr. Farris arrived in; is that
20 correct?

21 A. No, sir.

22 Q. It wasn't?

23 A. No, sir.

24 Q. A search was made of the room?

25 A. Yes, sir.

1 K. Rochford - Cross

2 Q. A search was made of his person?

3 A. He was patted down for officer
4 safety.

5 Q. You had him searched incident to
6 arrest?

7 A. Yes.

8 Q. Am I correct that no weapons were
9 found?

10 A. That is correct.

11 Q. No false ID?

12 A. That is correct.

13 Q. He checked in under his real name
14 using a real credit card?

15 A. Yes, sir.

16 Q. No videos of obscene in nature
17 either adult or a child?

18 A. No, sir.

19 Q. No sex toys?

20 A. No, sir.

21 Q. No ropes, handcuffs, nothing like
22 that?

23 A. No, sir.

24 Q. And on the phone he used his real
25 name and in the hotel he used his real name.

1 K. Rochford - Cross

2 He had his ID with him; correct?

3 A. Yes, sir.

4 Q. Agent Rochford, you have been doing
5 this for some time; is that correct?

6 A. Yes, sir.

7 Q. Have you posed as the undercover
8 agent sometimes?

9 A. I am certified as an undercover
10 agent, but, no, sir.

11 Q. But you have listened to a lot of
12 these tapes.

13 A. I have listened to a few.

14 Q. You probably reviewed a couple
15 conversations on the internet, instant
16 messages, emails, phone calls and so forth?

17 A. Chats, emails, yes, sir.

18 Q. You understand that sometimes
19 conversations take on a fantasy level that
20 don't necessarily equate to what happens in
21 reality?

22 A. Yes.

23 (Discussion was held off the
24 record.)

25 MR. BOAS: I have no further

1 K. Rochford - Redirect

2 questions. Thank you, Agent.

3 JUDGE HAY: Any redirect?

4 MS. SONG: I just want to
5 clarify a few things, Your Honor.

6 - - - - -

7 REDIRECT EXAMINATION

8 BY MS. SONG:

9 Q. Agent Rochford, I just want to be
10 clear. I believe you testified on direct
11 examination that the undercover agent, in
12 discussions with the Defendant, expressed some
13 concern about whether the Defendant was law
14 enforcement or some nervousness about getting
15 caught himself. Is that a fair
16 characterization of your direct testimony?

17 A. Yes, ma'am.

18 Q. On cross-examination by Mr. Boas,
19 you said that the undercover agent was trying
20 to allay some of the nervousness of the
21 Defendant in the calls prior to his arrest.

22 A. Yes.

23 Q. On the 5th, the day that the
24 Defendant was actually arrested, did the
25 undercover agent also express trepidation or

1 Magistrate Hearing

2 JUDGE HAY: Is there any
3 evidence that you would like to --

4 MR. BOAS: I would like to
5 take a position, if I may.

6 JUDGE HAY: Absolutely.

7 MR. BOAS: Your Honor, for the
8 record, present in the Court today is my
9 client's wife and his father. His father, who
10 is a retired engineer, came in from Virginia.
11 His wife is also a physician. She's here in
12 Pittsburgh.

13 They live together in the suburban
14 north area of Pittsburgh with three children,
15 that's true. The children are young children.
16 Suffice it to say that there is no indication
17 whatsoever that there is any sort of threats or
18 problems at home, this is a certain isolated
19 incident. I don't think there is anything to
20 suggest nor does Pretrial Services apparently
21 feel that there is a reason to suggest nor does
22 the wife, Dr. Farris, suggest that there is any
23 problem with the children. I just want to note
24 that at the beginning.

25 The issue that's before this Court

1 Magistrate Hearing

2 out in the parking lot. Is he leaving? Is he
3 not leaving? He's obviously uncertain about
4 which way to go on this thing.

5 Here's a guy who is about as naive
6 of an offender as it's possible to be. He
7 registers under his name, uses his credit card,
8 uses his name on the phone, admits he's a
9 professional, and lists that the room is for
10 two. But in the room, unlike many other cases
11 that I have read about or seen or have been
12 involved in, there is no drugs, no alcohol, no
13 condoms, no sex toys, no videos, no ropes, no
14 anything. This is a guy who apparently
15 succumbed to some sort of proclivity and then
16 sort of backed away.

17 We will never know what would have
18 happened, but it doesn't appear that it
19 necessarily was going to happen. I'm not
20 saying that there may not be a conviction here.
21 He may not be guilty of the crime, but there is
22 nothing to indicate that there aren't
23 conditions or combination of conditions that
24 during a period of time between now and trial a
25 resolution in this matter -- it wouldn't

Magistrate Hearing

prevent him from either flight or being a
danger to the community.

I understand that these kinds of cases don't lend themselves to agreement between counsel because of the sort of public nature of them and the political incorrect nature of them. I'm not suggesting in any way that this isn't a very heinous offense, but unlike many crimes even where we have violent offenders or serious drug dealers, arrangements are made. This one is usually thrown in the lap of the Court for the lack of a better term.

When I was suggesting conditions, including surrendering his passport, I learned he doesn't even have a passport. This is a guy who has done nothing but work hard all his life for the good of the community, and for whatever reasons and whatever stressors he was experiencing, his ability to completely repress certain feelings he may have temporarily slipped. But that's in the light most favorable to the Government.

If he were released and as the Government suggested, placed on electronic home

1 Magistrate Hearing

2 detection, if he were checking in on a daily
3 basis, if he were ordered and required to
4 receive counseling and treatment and follow any
5 regimen including medication that they suggest,
6 if he were denied the opportunity to have any
7 contact with minor children except his own or
8 even his own temporarily until we resolve
9 issues there, but I'm not sure that's really
10 necessary, I don't see where there is any real
11 danger.

12 No one is considering him a risk of
13 flight. Without any history of his name coming
14 up on radar anywhere before, without any
15 indication that there is any violent tendencies
16 here, it seems to me that it's consistent with
17 a presumption of innocence to say that there is
18 no condition or combination of conditions for
19 this man not to be reunited with his wife and
20 spend his days preparing for this trial on the
21 outside with as many conditions as the Court
22 feels is necessary to impose. I think it's
23 unrealistic and unreasonable.

24 Pretrial Services, who is not an
25 advocate for the Defendant as I am, sees it the

Magistrate Hearing

same way. They, in a very careful and thorough report, indicated that if he avoids all contact directly or indirectly with persons who are and may become potential witnesses, victims, not associate with children under the age of 18 except in the presence of a responsible adult who is aware of the nature of the Defendant's charge, refrain from firearms, from alcohol, destructive devices. If he had a passport, he would surrender it. They talk about electronic home monitoring. It just seems to me that that's adequate.

Otherwise, we are just surrendering to the fear and entrapment in society today. It's just easier to be real hard on everybody, particularly guys who are charged with this kind of crime than it is to, perhaps, be reasonable and analyze carefully whether there are conditions or combination of conditions that would adequately take care of the risk of flight and danger to the community.

Now that it's known that this charge is pending, now that it's known what occurred and what potentially could have occurred, it's

1 Magistrate Hearing

2 not difficult to monitor this individual to
3 make sure that during the period of time
4 leading up to trial while he's presumed
5 innocent, a man who's an educated person who
6 has done nothing but give, give, give, to the
7 community, and consistent with the presumption
8 of innocence, that he not spend his days in the
9 Allegheny County Jail.

10 By the way, a person with these sort
11 of charges is in tremendous risk of danger.
12 It's a known fact that this is not a good place
13 to be for these kind of charges. You can't
14 help it if you are convicted and sentenced, but
15 with adequate conditions, we can avoid a
16 serious risk to him during this initial period.

17 I might also say, Your Honor, that
18 my client today, tomorrow, and in the ensuing
19 week, was expecting all sorts of persons from
20 out of the country, who are also experts in
21 this area of Alzheimer's research that he is
22 doing. He's administering a grant in excess of
23 \$2 million. While it may be that he is not
24 working during this period of time, it's
25 essential that for at least some period of time

1 Magistrate Hearing

2 he engage in all of the necessary steps to make
3 sure other people are in charge of the vital
4 work that he was doing, that this grant be
5 administered properly, that it's shifted to
6 other people, that other administrators take
7 over, that people who were about to meet with
8 him at least be distributed the workload that
9 he was in the process of doing himself.

10 There is more to this than saying
11 this is a bad crime, so let's keep him in jail.
12 I don't have any doubt that the conditions I
13 have talked about and other ones that the Court
14 thinks are reasonable would prevent a risk or
15 harm to the community and a risk of flight.

16 I'm very thankful that are good
17 Pretrial Services Office is able to see through
18 a lot of what would be the emotional and
19 prejudicial aspects of this to come up with the
20 same recommendation.

21 So that's my position, Your Honor.
22 If you need to have any additional information
23 from either his wife or father, they are here
24 and they can answer any of the questions.

25 JUDGE HAY: All right. Thank

1 Magistrate Hearing

2 you.

3 MR. BOAS: Thank you.

4 MS. SONG: Your Honor, If I
5 pick up where Mr. Boas left off, Pretrial
6 Services has recommended conditions. As Your
7 Honor is aware, they are precluded in their
8 analysis from considering the instant charge.

9 In the case of a person like the
10 Defendant who comes forth before this Court
11 without criminal history and without other
12 contacts with law enforcement, they are
13 constrained to recommend detention regardless
14 of what it is that he's charged with. I know
15 that the Court will bear in mind that their
16 recommendation is, in my opinion, not
17 comprehensive when you take into account all of
18 the facts that are before this Court that bear
19 on danger.

20 Now, this is a presumption case,
21 Your Honor, under 18 United States Code 3142.
22 This is a crime of violence, and the Court is
23 to presume that there is no combination of
24 conditions that can allay the concern for
25 safety to the community.

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negotiated amount of \$700 plus \$50 for gas extra. Then he apparently put in an extra \$10, took off his wedding ring, and then went outside of a plan that had been developed with the undercover agent to gain access to the child before he was supposed to even within this plan that had been devised.

The testimony is clear that there was to be a transaction. The adults were going to speak, and then he would have access to this ten-year-old child and at the time of arrest he's approaching the car where he believes a ten-year-old is by herself, and the agent is saying, "You stay away from her," or engaging in this fiction of "We haven't even talked yet. Stay away from her. She's out in the car alone." Going over to the car, banging on the window, and arrested as he is grabbing the door handle, those are actions.

Whatever he said after arrest or leading up to it about cold feet, there is nothing consistent with any hesitation in those actions that are before this Court. This was not a momentary lapse. When you look at the

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2 children, how wise he was to go through an
3 adult intermediary. When you look at the facts
4 of this case, he assured that this was a child
5 who had been sexualized, assured that this was
6 a child who was discreet and wasn't going to
7 tell her mother, and assured that this was a
8 child with some experience with the things that
9 he intended to do. Given the fact that it's
10 obvious that he used children as sexual
11 objects, Your Honor, we cannot conceive of any
12 condition that can mitigate that danger on
13 these facts given the series of actions that he
14 was willing to take to make it happen.

15 This Court sees other offenses where
16 we have chats among people that could be states
17 away from each other separated by miles, using
18 fake names, describing themselves as very
19 different physically, mentally, and
20 professionally than what they are. There was,
21 again, nothing fantastic about what the
22 Defendant presented and what his intentions
23 were and what he did.

24 He used his own credit card and
25 rented the room in his own name. The defense

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suggests that shows naivete. I don't think it's for us to ponder what that shows. There is, again, is nothing to suggest that this was all a fantasy in his mind.

As in another factor, Your Honor, I would just ask you to consider that in the initial conversation, desire was not for a one-time thing. His stated desire in talking to the undercover agent was, "I can make you a rich man." He had a desire for a long-term relationship with a ten-year-old child so he could engage in sexual acts with her. That, again, is a factor that makes the Government particularly concerned.

As far as the factors that are laid out in 3142, Your Honor has heard the weight of the evidence against the Defendant. There are many recorded calls. There is concrete evidence, and we suggest that the weight of the evidence is very strong.

As far as the history and characteristics of the person notwithstanding any laudable professional accomplishments he may have or the family that he appears to have

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that's supporting him, there was also a very clear consciousness of guilt, consciousness of illegality, repeated references to law enforcement. We think that Your Honor can infer in looking at the history and characteristics of the person on the basis of the evidence you've heard that as I said in addition to these, perhaps, laudable accomplishments, he's harboring some very dark urges that he's very capable of segregating from his professional and personal life in acting upon.

Regarding the nature and seriousness of the danger to any person, again, Your Honor, that is what the Government is hanging it's head on in this case. The nature of the danger is simply too great. This Court is facing a situation where the choice put before you is to detain the Defendant or send him home to a house where he has three young female children. On the basis of everything that you have heard, we think that that is simply a danger that cannot be accommodated with any conditions and ask the detainment of the Defendant.

1 Magistrate Hearing

2 JUDGE HAY: I will let you
3 have the last word.

4 MR. BOAS: Something comes to
5 mind here. Ms. Song points out, you know,
6 here's a guy that has these deep dark urges
7 that he on at least one occasion in his
8 40 some years had a hard time suppressing.

9 You know, one of the interesting
10 problems is, and I'll note and I'll point out
11 to the Court, that my client hasn't had
12 treatment for this in the past. It's a whole
13 new ball game now. It's almost as if a person
14 who has a normal life and has a wife and has a
15 family and is well respected in the community
16 and has these urges can't come forward in some
17 respects in our society. Because as long as
18 it's not known, as long as no one is aware of
19 this, and as long as he can suppress it, he can
20 live a seemingly normal life.

21 Perhaps, if ten years ago or 20
22 years ago he admitted this to himself and to
23 others and had gone into treatment, maybe it
24 would be a different story. But now it's out
25 in the open. Now there is nothing that

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prevents him from taking all of the professional steps necessary to deal with this issue. Whether it's counseling or medication or therapy or family therapy or group therapy, there's ways. We know this psychologically and medically that this issue can be controlled and dealt with, but now it's too late in some respects because of the pendency of the charges. But it's not too late to have the kind of treatment and therapy that this Court will order that he get that would help him avoid the risk that the Government is talking about.

I would also point out -- and I'm hesitant to say this because I know after talking to the wife and after talking to my client that there is no risk with his children. But if the Court feels that that argument that he would be going home to three young children -- and the reason I'm hesitant to say it because if the Court's implying to release my client, I feel the best thing for him is to be with his wife and family.

If that seems to be a problem for

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2 the Court, at least until that's resolved by
3 Children and Youth Services or some
4 professional who definitively says there is no
5 risk to his children, we have no problem with
6 him staying somewhere else, nor do we have a
7 problem with there being some other adult
8 person around who would agree to report to the
9 Court if he doesn't come home or if anything
10 unusual happens.

11 We are very confident that a series
12 of conditions can avoid any risk of flight or
13 any risk of danger to the community. We ask
14 the Court to seriously consider this matter and
15 whatever conditions the Court feels necessary
16 along the lines that I suggested or others that
17 in the Court's wisdom it might think of.

18 He's not a guy who needs to sit in
19 the County Jail for the extended period of time
20 it will take and run the risk of endangering
21 himself by people who fancy themselves against
22 child molesters, basically. We know that
23 that's a true fact. You hear it all the time
24 and you see it all the time.

25 I hate to bring it up in front of my

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client and his family, but that is a reality. So I don't think we need to go quite that far in this case. It's true. This is one of the presumptions of the case, but we've talked about all of these conditions that would alleviate the risk to the community. This isn't a guy who has any reason to believe he can't be monitored in a way that will avoid these risks. He is not some sophisticated street guy who can do all sorts of things. He is a naive guy.

In fact, this whole thing about saying "Are you the police" is to prove how worldly he is. Nobody who knows anything ever asks that question because it means nothing. "No, I'm not." "Oh, great. Now, I can get off because you lied to me." Nobody who knows anything ever says that. This is additional evidence of his naivete and lack of experience in this area. So that's my point, Your Honor.

JUDGE HAY: Let me ask you this question. Who cares for the children during the day whenever the doctors are working?

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Magistrate Hearing

MRS. FARRIS: The nanny.

MR. BOAS: A nanny, Your Honor, and the wife works part-time three days a week. So she's home a lot, and the nanny is home and we can always have an adult home, always. We can have that person come down here and agree to call the Court or call Pretrial Services if anything happens. We are willing to do anything to show our good faith and our desire to prove that he's no risk. He loves his wife. He loves his family.

This is a world-shattering event for this family, but we want to pick ourselves up and do what we can to prove to the Court that he is no danger and begin with the ramifications of this pending charge.

JUDGE HAY: All right. I need to review the Pretrial Services report, which I have not done. We are going to take a ten- or 15-minute recess while I do that.

MR. BOAS: Thank you, Your Honor.

(Short recess was taken.)

JUDGE HAY: We are going to

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Magistrate Hearing

continue this hearing until Monday at 3:00
pending the Court's receipt of two forensic
reports, but before we adjourn for the
afternoon, Mr. Boas, if I can impose upon you
to get Dr. Farris' signature on the waiver of
the preliminary examination and yours as well.

MR. BOAS: Thank you, Your
Honor.

JUDGE HAY: Take care of that
administrative matter.

All right. Then we will adjourn,
and we will reconvene at 3:00 on Monday.

(At this juncture, the matter
was adjourned at 4:55 p.m.)

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C E R T I F I C A T E

I hereby certify that the
proceedings and evidence are contained
fully and accurately in the
stenographic notes taken by me on the
hearing of the within cause and that
this is a correct transcript of the
same.

S/Karen A. Shiel

Karen A. Shiel

Court Reporter